IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.4854 of 1999

M/s.Bajarangabali Steels,
No.1, T.H.Road,
Tondiorpet
Chennai-81
rep. by Partner Shankar .. Petitioner

vs.

1. The Executive Engineer
   Tamil Nadu Electricity
   Chennai Electricity Distribution Circle (North)
   Tondiorpet, Chennai-600 081

2. The Superintending Engineer
   Tamil Nadu Electricity
   Chennai Electricity Distribution Circle (North)
   791, Anna Salai, Chennai-600 002 .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings of the second respondent made in Lr.No. SE/ CEDC/ TNEB/ North/ AssistantEngineer/ North/V2/14/98.99/ No.061-2/99, dated 11.3.1999 and quash the same.

For petitioner : Mr.C.S.Krishnamoorthy
For respondents : Mr.R.Subbiah (Electricity Board)

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O R D E R

Heard Mr.C.S.Krishnamoorthy, the learned counsel appearing for the petitioner and Mr.R.Subbiah the learned counsel appearing for the respondents.

2. The brief facts of the case, as stated by the petitioner, are as follows:

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The petitioner is a small steel industry having Low Tension Electricity Supply with a sanctioned load of 128 H.P. with Electricity Service No.L.T.Sc.No.03:01:96. The petitioner has been paying the consumption charges to the respondents regularly and there has been no violation of any of the provisions of The Indian Electricity Supply Act and the terms and conditions of supply framed by the Electricity Board.

3. The petitioner had applied for an additional load of 15 H.P., on 25.3.1998, and had paid Rs.4,500/- as earnest money deposit and it was registered as I-No.006 of 97-98. In order to report readiness for availing the additional load, the petitioner had purchased motors, on 1.6.1998, for installation and some of them to be used as spare motors. On 4.6.1998, the petitioner's service connection was inspected by the Assistant Executive Engineer and the Assistant Engineer of the Anti Power Theft Squad of the respondent Board. After the inspection, it was alleged that the petitioner had exceeded 26 H.P. against the sanctioned load of 128 H.P. A show cause notice had been issued, on 6.7.1998. The petitioner had replied stating that there was no violation in the said service and the connected load was only 128 H.P. The petitioner had also sought for details of the alleged violation.

4. As per clause 6.02 of the amended terms and conditions of electricity supply issued in B.P.(FB) No.155, dated 2.8.1997, framed under Section 49 of The Electricity Supply Act, 1948, the respondent has to give a reasonable opportunity to the consumer to make his representation and the assessment of compensation charges can be made only after examining the materials available. As per the Board proceedings, a detailed enquiry has to be conducted after giving an opportunity to the consumer to explain his stand. However, in the present case, the first respondent had passed the assessment order directing the petitioner to pay a sum of Rs.3,13,963/- under threat of disconnection of electricity supply for non-compliance without conducting an enquiry, as contemplated by the terms and conditions of supply.

5. Aggrieved by the said order, the petitioner had preferred an appeal before the second respondent, who had passed the impugned order, dated 11.3.1999, asking the petitioner to pay the balance amount due in installments. In such circumstances, the petitioner had preferred the present writ petition before this Court invoking the Article 226 of the Constitution of India.

6. In the counter-affidavit filed by the respondents, the claims made by the petitioner have been denied. It has been stated that the electricity service connection given to the petitioner for industrial purpose, with a sanctioned load of 128 H.P., was inspected by the Assistant Executive Engineer/APTS/North, on 4.6.1998, and it was found that there was total connected load of 154 H.P. in violation of the

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terms and conditions of supply of electricity. Therefore, a show cause notice had been issued to the petitioner, on 6.7.1998. Considering the explanation submitted by the petitioner, an assessment order was passed by the first respondent directing the petitioner to pay a sum of Rs.3,13,963/- in 10 installments by an order, dated 29.9.1998, since the petitioner was liable to pay the said amount towards unauthorised additional load as per the terms and conditions of supply of electricity.

7. It has been further stated that out of the 10 installments, the petitioner had paid the first four installments of Rs.1,25,587/-. On the appeal filed by the petitioner, the second respondent had passed an order confirming the assessment order, by his proceedings, dated 11.3.1999, after a careful consideration of all the materials available before him. The petitioner had paid a sum of Rs.94,188/- in compliance with the order of interim stay granted by this Court to pay 50% of the balance amount by an order, dated 24.3.1999, made in W.M.P.No.7004 of 1999 in W.P.No.4854 of 1999.

8. The learned counsel appearing on behalf the petitioner had submitted that the respondents have passed the orders in question without giving the petitioner a reasonable opportunity of hearing and without application of mind, contrary to the positive directions given by this Court by its various orders including those that have been stated by the Division Bench of this Court in THE DIVISIONAL ENGINEER ETC., & ANOTHER Vs.MANGALAKSHMIAMMAL reported in (1997 Writ L.R.417). Therefore, the orders passed by the respondents are in violation of the principles of natural justice as well as the terms and conditions of supply of electricity.

9. It has also been stated that no reason has been given by the second respondent while passing the impugned order, dated 11.3.1999.

10. At this stage of the hearing of the writ petition it was submitted that since the main contention of the petitioner is that the impugned order had been passed without giving sufficient opportunity to the petitioner to substantiate its claims and to defend its case it would suffice if the petitioner is permitted to place all the records available with the petitioner before the second respondent and if the petitioner is given a reasonable opportunity of being heard on the matter.

11. The learned counsel appearing for the respondents has no objection for such an order being passed by this Court.

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12. Based on the submissions made by the learned counsels appearing on behalf of the parties concerned, the impugned order of the second respondent, dated 11.3.1999, is set aside and the second respondent is directed to dispose of the appeal afresh, with regard to the issues to be decided, on merits and in accordance with law, after giving sufficient opportunity to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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